

proposed rule change (SR-NYSE-98-48) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Jonathan G. Katz,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41055; File No. SR-NYSE-98-40]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc. Permanently Approving a Pilot Program Amending Paragraph 902.02 of the Exchange's Listed Company Manual to Reduce Initial Listing Fees Under Certain Circumstances

February 16, 1999.

#### I. Introduction

On November 20, 1998, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change establishing a pilot program to amend paragraph 902.02 of the Exchange's Listed Company Manual ("Manual") and seeking permanent approval of the pilot program. Paragraph 902.02 of the Manual contains the schedule of current listing fees for companies listing securities on the Exchange.

The proposed rule change was published for comment in the **Federal Register** on November 30, 1998.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposal.

#### II. Description of Proposal

The proposed rule change amends the listed company fee schedule, set forth in Paragraph 902.02 of the Manual, as it applies to certain business combinations. Specifically, the Exchange seeks to adopt a reduced fee structure for mergers between an NYSE-listed company and a non-NYSE listed

company (not including "back door listings" pursuant to paragraph 703.08(E) of the Manual).

The Exchange proposes to reduce the basic initial listing fee such that the fee is 25% of the applicable basic initial listing fee for the above specified listings that occur within 12 months of the merger. However, if the merger and subsequent listing occur within 12 months of the initial listing of the NYSE-listed company, the Exchange proposes to reduce the basic initial listing fee for the merged entity to the lesser of (a) 25% of the applicable basic initial listing fee for the merged entity; or (b) the full applicable basic initial listing fee for the merged entity less the fee already paid by the NYSE-listed company at the time of its initial listing.

#### III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act<sup>4</sup> and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the provisions of Sections 6<sup>5</sup> and 11A of the Act.<sup>6</sup> More specifically, the Commission believes that the proposed rule change is consistent with Sections 6(b)(4)<sup>7</sup> and 11A(a)(1)(C)(ii) of the Act.<sup>8</sup> Section 6(b)(4) requires that the rules of an exchange assure the equitable allocation of reasonable dues, fees, and other charges among members, issuers, and other persons using its facilities. In Section 11A(a)(1)(C)(ii) of the Act, Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure fair competition among exchange markets, and between exchange markets and markets other than exchange markets.

The Commission believes that, by reducing initial listing fees under certain circumstances, the proposal may ease the financial burdens of merger transactions with Exchange-listed issuers, thus facilitating capital formation. The Commission also believes that the proposed reduction in listing fees, which applies to all similarly situated issuers, may increase competition for listings between market centers. For the foregoing reasons, the Commission finds that the NYSE's proposal is consistent with the Act.

<sup>4</sup> In permanently approving the pilot, the Commission considered the pilot's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78k-1.

<sup>7</sup> 15 U.S.C. 78f(b)(4)

<sup>8</sup> 15 U.S.C. 78k-1(a)(1)(C)(ii).

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-NYSE-98-40) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Jonathan G. Katz,**

*Secretary.*

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## DEPARTMENT OF STATE

[Public Notice No. 2983]

### Advisory Committee on International Law; Notice of Committee Meeting

A meeting of the Advisory Committee on International Law will take place on Monday, March 15, 1999 from 10:00 a.m. to approximately 5:00 p.m., as necessary, in Room 6417 of the United States Department of State, 2201 C Street, N.W., Washington, D.C. The meeting will be chaired by the Legal Adviser of the Department of State, David R. Andrews, and will be open to the public up to the capacity of the meeting room. The meeting will discuss the International Law Commission's 1998 report, residual head of state immunity, the new Executive Order on implementation of human rights treaties, the proposed convention on the enforcement of judgments, developments involving the International Criminal Court and the International Court of Justice, and other current topics.

Entry to the building is controlled and will be facilitated by advance arrangements. Members of the public desiring access to the session should, by Wednesday, March 3, 1999, notify the Office of the Assistant Legal Adviser for United Nations Affairs (telephone (202) 647-2767) of their name, Social Security number, date of birth, professional affiliation, address and telephone number in order to arrange admittance. This includes both government and non-government admittance. All attendees must use the "C" Street entrance. One of the following valid IDs will be required for admittance: any U.S. driver's license with photo, a passport, or a U.S. Government agency ID.

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 40698 (November 20, 1998), 63 FR 65833 (Notice of filing and order granting partial accelerated approval to the proposed rule change establishing a pilot program to reduce initial listings fees under certain circumstances. The pilot program expires on February 19, 1999.).